

18 August 1954

OGC Has Reviewed

MEMORANDUM FOR: Chief, Special Contracting, Allowances and
Processing Staff, Office of Personnel

SUBJECT: Leave Status -- Contract Personnel

25X1A 1. This will acknowledge receipt of your memorandum to Mr. [] in which you request our opinion on several questions relating to the entitlement of contract agents and contract employees to sick and annual leave. You also request that, in considering the questions relating to contract employees, we assume the leave clause in the contract reads as follows:

"You will be entitled to sick and annual leave equal to and subject to the same rules and regulations applicable to CIA employees. Such leave may only be taken at times and places approved in advance by appropriate representatives of CIA."

2. Your memorandum raises the general question of the entitlement of persons with whom contractual arrangements are entered into by this Agency to statutory annual and sick leave either by operation of law or by virtue of the contractual arrangement. Briefly stated, our conclusion is that the true independent contractor is not entitled to these benefits under the wording of the annual leave statute because (1) he is not an officer or employee of the Federal Government and (2) he does not occupy an office or position in the United States Government; and, while he may be given benefits under his contract similar in form, the benefits so granted have no legal relationship to the benefits granted by statute regardless of the wording in his contract instrument. We are also of the opinion that contract employees as defined in Section 14.8 are employees for purposes of statutory annual and sick leave and are entitled to such leave regardless of the wording of their contracts.

3. The Annual and Sick Leave Act of 1951 by its specific terms applies to all civilian officers and employees of the United States, with the specific exceptions noted in Section 202(b) of the Act. As you know there are many statutes dealing with matters relating to Federal employment which are stated to be applicable to "all civilian officers and employees of the United States," and the applicability of these statutes to persons enjoying a contractual employment relationship to the United States has been discussed on several occasions by the Comptroller General. The consistent conclusion

of the rulings of the Comptroller General has been that those persons who are hired on a personal service basis and who perform their work under the supervision and control of the Government are to be regarded as employees for purposes of the statutes. The following quotation, taken from an opinion interpreting the Annual and Sick Leave Act of 1936, is typical:

"Persons authorized to be and who are employed under an instrument designated as a 'contract' and who perform their work under the supervision and control of Government officers are not exempted from Federal laws relating to Federal officers and employees, except such as are inconsistent with the plain provisions of the law granting such authority. The exemption from leave benefits of the 'persons engaged under contract' by its very terms is clearly shown to refer to contractors engaged -- not employed-- on other than a personal service basis (generally those who do not perform their work under the supervision and control of the Government)." (23 Comp. Gen. 425, 429.)

The conclusion is to us inescapable that contract employees, as the term is described in Section 14.8 of the Confidential Funds Regulations are employees for purposes of the Leave Act and are entitled to leave by operation of that statute. Since this is true, a provision in a contract with this type employee which excludes leave benefits would be legally noneffective.

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5. With this general statement in mind we would like to answer first the question relating to the Contract Agent who transfers to Staff Agent status:

a. When the individual is paid for unused leave, does this prevent the Agency from making his Staff Agent appointment effective until the period covered by the lump-sum leave payment has expired in order to avoid dual compensation? No. Under the definition of contract agent contained in Section 14.9 of the Confidential Funds Regulations these individuals are independent contractors not occupying an office or position in the U. S. Government and are entitled only to whatever payments are provided for in the contract. A lump-sum leave payment made to such an individual in our opinion is in the nature of a contract settlement. This would not prevent the Agency from making his Staff Agent appointment effective immediately following the expiration of his contractual arrangements with the Agency, since this would be in effect an initial appointment and not a transfer from another position with the same or similar leave system.

6. The following are our answers to the specific questions concerning contract employees converted to staff employees:

a. Is he eligible to transfer unused leave balances to his new status? Yes. Since a contract employee is an employee for purposes of the Annual and Sick Leave Act, he must comply with its provisions and would be not only eligible but required to transfer unused leave balances to his new status.

b. Does service under his contract count as creditable Government service in determining his leave category while in staff status? Yes, for the reason that he is regarded as a Government employee during the period of service under his contract.

c. Does it make any difference whether he receives staff status with this Agency or with another Government agency? It would make no difference provided the agency with which he receives staff status has a leave system the same as that of this Agency. It may be, however, that for reasons of security he may not be able to acknowledge to the other agency the fact of his employment by CIA in which case an arrangement would have to be made on an ad hoc basis with the employing agency to insure that he received credit for his CIA service.

d. If it is determined that the leave cannot be transferred, and he receives a lump-sum payment for unused annual leave, does this raise a problem of dual compensation in establishing the

effective date of his staff appointment? In cases where, for reasons of security the employee receives a lump-sum payment, he may not legally commence his staff employment with another agency until the period covered by the lump-sum payment has expired. His case may also require special arrangements with the employing agency to insure that he receives credit for his CIA service.

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Office of General Counsel